

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

CORAM:

THE HON'BLE JUSTICE **C.V.KARTHIKEYAN****C.S. No. 777 of 2017**

M/s.A.P. International,
A partnership firm represented by its partner,
Mr.Sanjay A.Wadhwa. .. Plaintiff

..Vs..

1. M/s.V.Creations,
represented by its Proprietor S.Thanu
2. Sun TV Networks Limited. .. Defendants

For Plaintiff : M/s.A.Lakshminarayanan
For Defendant-1 : M/s.Kumarpal R.Chopra
For Defendant-2 : M/s.M.A.Vimal Mohan

PRAYER : Plaint has been filed Under Order VI Rule 1 of O.S. Rules read with Order VII, Rule 1 of Civil Procedure code, (a). a declaration that the termination/cancellation of the Distribution Agreement dated 13.07.2017 by the 1st defendant, vide its reply notice received on 03.10.2017, is invalid, illegal and liable to be set aside; (b). a permanent injunction restraining the defendants, their promoters, assigns, successors-in-interest, licensees, franchisees, partners, directors, representatives, servants, distributors, employees, agents etc. or anyone associated with them from acting in derogation of the

Distribution Agreement dated 13.07.2017 in any manner, including by telecasting the film "Velaiilla Pattadhari 2" described in Schedule A of the said Distribution Agreement, on or before 19th November 2017; (c). to direct the defendant to pay to the Plaintiff costs of the Suit; and (d). pass such further or other orders as this Court may deem fit and proper thereby rendering justice to the Plaintiff.

J U D G M E N T

The plaintiff and defendants have settled their issues among themselves. To that effect, a joint memorandum of compromise has been filed.

2. This joint memorandum of compromise has been signed by the partner of the plaintiff, Proprietor of the 1st defendant and authorised signatory of the 2nd defendant. They have also affixed their seal and put their signatures in each page of the joint memorandum of compromise.

3. The learned counsels for the plaintiff, 1st defendant and 2nd defendant have also signed in the joint memorandum of compromise. The joint memorandum of compromise among other terms also states that the amount of Rs.2 Crores which was deposited to the credit of the Suit in the High Court shall be received by the 1st defendant. The joint memorandum of compromise shall form a part of decree.

4. The terms of memorandum of compromise are recorded which is as follows;

"11. The Plaintiff, 1st defendant and 2nd defendant after deliberations have agreed to settle the matter in terms of the Memorandum of Compromise as follows:

a. The 1st Defendant hereby withdraws the unilateral termination/cancellation of the Distribution Agreement dated 13.07.2017 and confirms the validity of the Distribution Agreement dated 13.07.2017 and agrees to abide by the terms of the Distribution Agreement dated 13.07.2017.

b. The Plaintiff, 1st Defendant and 2nd Defendant hereby acknowledges and confirms that with regard to the film "VIP-2", the rights mentioned below have been assigned to 2nd defendant by the 1st defendant for the Territory of India on an exclusive basis and for rest of the world on a non-exclusive basis as per the Agreement dated 08/09/2017 and letter dated 08.09.2017 between the 1st defendant and 2nd defendant:

Copyright for Broadcasting the said Film through World Satellite Television Broadcast, Satellite Television Broadcasting Service, Cable Television Rights, Direct-To-Home Broadcast, Direct Satellite Service, Internet, Computer Rights, Directo Antenna Rights, exploitation right for home use by Video Copy Rights including Video

Cassette Rights, Video Streaming through all forms, Internet Streaming, Pay Download to own Internet, Pay to Download to own on Broadband, IPTV, OTT, Web TV Rights, Broadband, Telephone, Telephony, Mobile, Pagers, Electronic Merchandise, Radio (all dimensions), DVBT, DBS, Terrestrial Television Broadcast (all dimensions), through Cable/via Cable TV, Video On Demand Broadband, Movie On Demand, Embedding Rights (on SD Card, Micro Chip, OTG, Pen Drive and such other media storage devices), Local Delivery Systems, Video Exploitation Rights and / or any of its formats to be invented in future, Digital Video, High Definition (HD), VCD, DVD, HDDVD Rights, Laser Disc, Multi Media rights, Blue Ray Disc, CD-ROM Software Rights, Advertisement Copy Rights, Publishing Rights, Title Rights, Recording Rights, U-matic, Free TV Rights, Self Destructive Disc, MMDS, Airborne, High Seas Rights, Railborne, Roadborne, Inflight, Seaborne, all modes of public/private transportation, Pay TV rights, Pay-per-view, Pay Per View on DTH, Direct-To-User (DTU), ADSL, Public Service Broadcasting, Private Communication/Broadcast, Cable, Wire, Wireless, 2D, 3D formats/Dimensions of the Film, or any other formats/Dimensions which may be in existence now or invented in the future or through any other forms, means and modes and any forms of communication like Signs, Signals, Writing, Pictures, Images and Sounds of all kinds by transmission of Electro-Magnetic Waves through space or through cables intended to be received by the general public either directly or indirectly through

the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly or any other systems without restriction of geographical area and including all channels of Doordarshan". It is also expressly clarified that the exploitation of Over-The-Top (OTT), Subscription Video on Demand (SVOD), Transactional Video on Demand (TVOD), Electronic Sell-Through (EST), Advertising Video on Demand (AVOD), Free Video on Demand (FVOD) and Direct-to-Home Video on Demand (DTH VOD), for the territory of India, shall be for a perpetual period commencing from 02.10.2022. Further it is expressly clarified that the exploitation of AVOD and FVOD for the rest of the world shall be for a perpetual period commencing from 02.10.2022. The defendants agree that if Amazon exercises the "ROFR" for the film VIP-2, Plaintiff can license on the fee stipulated by Defendant 1, VOD rights to Amazon on a non-exclusive basis for India, the fee received shall be paid to defendant-2.

12. The 1st defendant and plaintiff agree that to the extent of the rights granted to the 2nd defendant, the plaintiff's right under the Distribution Agreement dated 13.07.2017 shall be converted to non-exclusive relating to the film "VIP-2" subject to the exclusive rights granted to the 2nd defendant for the territory of India. All other rights relating the film "VIP-2" shall as per Distribution Agreement dated 13.07.2017 shall continue to remain with the Plaintiff.

13. In relation to the Film Sketch, the 1st defendant confirms all rights of the Plaintiff as per the Distribution Agreement dated 13.07.2017 and further confirms and undertakes that:

a. The film Sketch will be theatrically released in India no later than January 31, 2018.

b. The Plaintiff can make available the film Sketch to Amazon from forty (40) days after the day of theatrical release of the Film Sketch in India or January 31, 2018, whichever is earlier (Availability Date) and Amazon will have fifty (50) days holdback from the Availability Date from any satellite channel or Linear telecast.

c. The 1st defendant shall not cause to telecast the film Sketch on any satellite or Linear channel in India for a period of 100 days from the theatrical release of the film.

d. The 1st defendant will deliver all the materials (including but not limited to dpx and wave files) required to fulfill the plaintiff's obligations to Amazon for the film "SKETCH" within 7 days from date of theatrical release of the film.

e. The License Period for Amazon for the Film Sketch shall commence on the Availability Date and continue for a period of ten (10) Years from the Availability Date.

f. The Plaintiff shall make suitable amendments to the Amazon Agreement and the 1st defendant shall execute the Agreement as a confirming party.

14. The 1st Defendant confirms that the Plaintiff is entitled to a 7.5% revenue share of all revenues under the Distribution Agreement dated 13.07.2017.

a. The amount of Rs.2,00,00,000/- (deposited with the Hon'ble High Court by the Plaintiff, shall be taken by 1st defendant. Therefore, the total amounts received by the 1st defendant under the Distribution Agreement dated 13.07.2017 is Rs.5 Crore as given below, which is acknowledged and confirmed by the 1st defendant:

(i) Rs.1,00,00,000/- on 18.07.2017.

(ii) Rs.2,00,00,000/- on 28.08.2017.

(iii) Rs.2,00,00,000/- deposited with the Hon'ble Court.

Apart from the above, the plaintiff has arranged loans amounting to Rs.4 Crores from their associates on 19.07.2017 with interest @ 2.25% per month which was to be repaid out of the proceeds arising from the exploitation of rights vide agreement dated 13.07.2017.

(b). The amount of Rs.1.25 Crores that is receivable from Amazon, Rs.1,29 Crores recoverable from the theatrical distribution of the film "VIP-2" in Gulf and Singapore, Rs.39 Lakhs from exploitation of other internet rights, Rs.16 Lakhs from exploitation of Singapore Television rights (totaling to Rs.3.09 Crores) shall be collected by the plaintiff and all revenues

accruing in future shall be appropriated towards the loans received by the 1st defendant and revenue share of the defendant, as given below:

(i). Rs.4,00,00,000/-plus interest @ 2.25% per month till the date of repayment to the Plaintiff associates.

(ii). Rs.50,00,000/-revenue share due to the plaintiff on Amazon transactions.

c. After the payout of the amounts set out in Section 14.b.above, all further revenues shall be paid by the Plaintiff to the 1st Defendant (Against a valid GST Invoice subject to TDS), after deducting the Plaintiff's Revenue Share of 7.5%.

d. The parties agreed that the Plaintiff can withdraw/cancel the bank guarantee provided in favour of Registrar General on 20.10.2017 in C.S.No.777 of 2017.

15. The 2nd defendant hereby acknowledges and confirms that it foregoes and has no claims against the Plaintiff.

16. The parties undertake before the Hon'ble Court to abide by the terms and conditions set out above and not to dispute the same hereinafter in future.

5. The suit is decreed in accordance with joint memo of compromise and decree has to be passed in accordance with memo of compromise.

6. Suit in C.S.No.777 of 2017 is decreed in accordance with the joint memorandum of compromise which is to form part of decree. Consequently connected application is closed.

02.01.2018

Index : Yes / No
Web : Yes / No
ksa

Registry is directed to explore the possibility of issue amount which was deposited to the credit of the Suit.

Note to Office : Issue copy of Order today on 03.01.2018

सत्यमेव जयते

WEB COPY

C.V.KARTHIKEYAN, J

ksa



Judgment in
C.S. No. 777 of 2017

WEB COPY

02.01.2018